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Chief Executive Officer

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August 22, 2016

Board of Supervisors  
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Second District

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To: Supervisor Hilda L. Solis, Chair  
Supervisor Mark Ridley-Thomas  
Supervisor Sheila Kuehl  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: Sachi A. Hamai  
Chief Executive Officer

### **MOTION TO SEND FIVE-SIGNATURE LETTERS TO THE GOVERNOR AND THE STATE LEGISLATIVE LEADERSHIP IN SUPPORT OF SB 1291 (BEALL); SB 1174 (MCGUIRE); AND SB 253 (MONNING), ADDRESSING THE USE OF PSYCHOTROPIC MEDICATION ON FOSTER CARE YOUTH (ITEM NO. 11, AGENDA OF AUGUST 23, 2016)**

Item No. 11 on the August 23, 2016 Agenda is a motion by Supervisors Antonovich and Ridley-Thomas to move that the Board of Supervisors send five-signature letters to the Governor and the State legislative leadership in support of SB 1291, SB 1174, and SB 253, addressing the utilization of psychotropic medication on vulnerable youth.

Although there is Board-approved existing policy to support proposals to fund county activities related to monitoring the administration of psychotropic medication prescribed to children in foster care, there is no existing policy specific to the State administration and the court authorization of psychotropic medication prescribed to foster care children and youth. **Therefore, approval of this motion is a matter of Board policy determination.**

#### **Background**

In 2015, the California Senate Committees on Health and Human Services held hearings regarding the oversight and monitoring of psychotropic medication and mental health services for youth in foster care. As previously reported, various measures were also enacted last year in response to this issue to enhance the data sharing, monitoring, oversight, and training related to excessive prescribing of psychotropic medication in the foster care system, including SB 238 (Chapter 534, Statutes of 2015); SB 319 (Chapter 535, Statutes of 2015); and SB 484 (Chapter 540, Statutes of 2015).

The following three measures, currently pending in the Legislature, are in response to the continued concern over the excessive prescribing of psychotropic medication to foster youth in California.

*"To Enrich Lives Through Effective And Caring Service"*

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**SB 1291 (Beall) - Specialty Mental Health Services for Minor and Nonminor Dependents**

**SB 1291 (Beall)**, which as amended on August 15, 2016, would require, beginning July 1, 2018, annual county mental health plan reviews to be conducted by an External Quality Review Organization (EQRO), pursuant to Federal regulations, and include specific data for Medi-Cal eligible minor and nonminor dependents in foster care, such as prevention and treatment services, and access to and timeliness of mental health services.

Under current law, the Medi-Cal program, which is administered by the California Department of Health Care Services (DHCS), provides qualified low-income individuals with health care services, including specialty mental health services. Under existing law, specialty mental health services are provided by county mental health plans, and DHCS is responsible for conducting investigations and audits of claims and reimbursements for the expenditures of these specialty mental health services.

Specifically, SB 1291 would: 1) require DHCS to annually share data with county boards of supervisors, including data that will assist in the development of county mental health service plans and performance outcome system data; 2) require DHCS to notify the county mental health plan of any deficiencies and require the mental health plan to provide a written corrective action plan to the department; and 3) require the department to post any corrective action plan prepared by the county mental health plan to address deficiencies identified by the EQRO review and data on its website, among other provisions.

According to the author, to increase accountability, this bill proposes to consolidate data from existing resources into one plan under the oversight of the appropriate regulatory agency, and it requires county mental health plans to report out this data for children in the dependency and juvenile systems in a standardized format.

SB 1291 is sponsored by The National Center for Youth Law, and supported by the: California Court Appointed Special Advocates; California Council of Community Behavioral Health Agencies; California Youth Connection; California Youth Empowerment Network; Children's Advocacy Institute; Children's Defense Fund; Children Now; Children's Partnership; John Burton Foundation for Children without Homes; Mental Health America of California; and the National Association of Social Workers, among others.

The County Behavioral Health Directors Association notes concerns with this bill and states it would duplicate existing county reporting requirements. There is no opposition on file to this measure.

SB 1291 passed the Assembly Floor by a vote of 78 to 0 on August 18, 2016. This measure now returns to the Senate for concurrence in Assembly amendments before it proceeds to the Governor.

### **SB 1174 (McGuire) - Prescribing Patterns of Psychotropic Medications**

**SB 1174 (McGuire)**, which as amended on August 19, 2016, would: 1) require the DHCS and the California Department of Social Services (CDSS), to provide the Medical Board of California (MBC) with information to conduct an analysis of Medi-Cal and managed care prescribing patterns of psychotropic medications to determine if excessive prescribing exists; 2) require appropriate action to be taken if excessive prescribing exists, and adds repeated acts of clearly excessive prescribing psychotropic medications to a minor without a good faith prior examination to the list of cases that MBC must prioritize investigating and prosecuting; and 3) require, on or before January 1, 2022, the MBC to conduct an internal review of its data review, investigative, and disciplinary activities, and to revise its procedures relating to those activities, if necessary; and 4) sunset the provisions of this bill on January 1, 2027.

Existing law, under the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, among other provisions. The Board's responsibilities include enforcement of the disciplinary and criminal provisions of the Act. Additionally, under current law, the Medi-Cal program, which is administered by DHCS, provides qualified low-income individuals with health care services, including early and periodic screening, diagnosis, and treatment for any individual under 21 years of age.

According to the author, California currently has no requirements to identify those who are over-prescribing medication to foster youth, and the State has no system for evaluating the medical soundness of high rates of prescribing; and no way to measure the efficacy of these practices.

SB 1174 is sponsored by The National Center for Youth Law, and supported by: Advokids; Children Now; The Children's Partnership; John Burton Foundation; and the Medical Board of California (support if amended), among others. This measure is opposed by the California Academy of Child and Adolescent Psychiatry.

SB 1174 passed the Assembly Floor by a vote of 73 to 0 on August 19, 2016. This measure now returns to the Senate for concurrence in Assembly amendments before it proceeds to the Governor.

### **SB 253 (Monning) - Juveniles and Psychotropic Medication**

**SB 253 (Monning)**, which as amended on August 4, 2016, is a two-year bill continued from 2015, and would require that, beginning January 1, 2018, an order authorizing the administration of psychotropic medications to a dependent child, or a delinquent child in foster care, be granted only upon the court's determination that the administration of the medication is in the best interest of the child and that specified requirements have been met, including laboratory screenings.

Current law authorizes only a juvenile court judicial officer to make orders regarding the administration of psychotropic medications for a dependent or delinquent child who has been removed from the physical custody of his or her parent. Existing law further requires that court authorization for the administration of psychotropic medication to a child be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication.

SB 253 also would: 1) require that, under specified conditions, the court be prohibited from authorizing psychotropic medications until a pre-authorization review has been conducted by a child psychiatrist or behavioral pediatrician; 2) require court authorization to be sought in no case more than two court days after emergency administration of the psychotropic medication; 3) require the Judicial Council to adopt rules of court and develop appropriate forms to implement these provisions by January 1, 2018; and 4) require the child's social worker to submit a report to the court prior to any review hearing and include information from the child, the child's caregiver, the public health nurse, and the court-appointed special advocate, among other provisions.

SB 253 is sponsored by The National Center for Youth Law, and supported by: Advokids; Alameda County Board of Supervisors; California Court Appointed Special Advocates Association; California State Department of Justice; California Youth Connection; Children's Advocacy Institute; Children's Partnership; County Welfare Directors Association; Department of Social Services; John Burton Foundation; Judicial Council of California; National Association of Social Workers; and Youth Law Center, among others.

This measure is opposed by the County Behavioral Health Directors Association; California Academy of Child and Adolescent Psychiatry; California Alliance; California Medical Association; and the California Psychiatric Association.

SB 253 passed the Assembly Floor by a vote of 75 to 0 on August 18, 2016. This measure now returns to the Senate for concurrence in Assembly amendments before it proceeds to the Governor.

### **County Impact**

According to the Office of Child Protection (OCP), SB 1291 and SB 1174 are bills that would enhance State oversight over mental health plans for youth in foster care by requiring external quality reviews which will be shared with counties, and enhance oversight over the medical profession by reviewing prescribing patterns with respect to psychotropic medication use on children in foster care. Information gathered and analyzed through these bills will be provided to the counties to assist in these areas.

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In addition, the Office of Child Protection indicates that SB 253 has no significant impact, if any at all, on practice in Los Angeles County with respect to psychotropic medication use on children. OCP notes that the bill essentially codifies what the County's current protocols reflect, along with what the County is in the process of implementing in light of the forms and rule changes mandated by the Judicial Council on July 1, 2016. The OCP has convened a broad committee to ensure that these changes are occurring and that the County's protocols reflect best practices regarding the use of these medications.

The Department of Mental Health (DMH) indicates that it has been proactive in working with the courts in the County to develop procedures to ensure that children in foster care and probation custody receive the highest quality and most timely medication services and review possible. While DMH believes that these measures are unnecessary to ensure its continued commitment to provide the best medication and support services possible to these children, DMH would not recommend opposing legislation that would require the highest quality of medication services possible to children throughout the State of California.

### **Conclusion**

Although there is Board-approved existing policy to support proposals to fund county activities related to monitoring the administration of psychotropic medication prescribed to children in foster care, there is no existing policy specific to the State administration and the court authorization of psychotropic medication prescribed to foster care children and youth. **Therefore, approval of this motion to send five-signature letters to the Governor and the State legislative leadership in support of SB 1291, SB 1174, and SB 253, addressing the utilization of psychotropic medication on vulnerable youth, is a matter of Board policy determination.**

We will continue to keep you advised.

SAH:JJ:MR  
OR:TOF:ma

c: Executive Office, Board of Supervisors  
County Counsel